REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

GARDENS BY SANDERS, INC. (GBSI),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE, HON. KIM S. JACINTO-HENARES,
Respondent.

CTA Case No. 9342

Members:

CASTAÑEDA, JR., *Chairperson*
and
MANAHAN, *JJ.*

Promulgated:

NOV 27 2018 9:N a.m.

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DECISION

MANAHAN, *J.:*

This is a Petition for Review[1] filed on May 4, 2016 by Gardens By Sanders, Inc. (GBSI), praying for the cancellation of the assessment and the reversal of the Final Decision on Disputed Assessment (FDDA) issued by the Commissioner of Internal Revenue that found it liable for alleged deficiency income tax and value-added tax (VAT), inclusive of surcharge and interest, in the aggregate amount of ₱59,513,350.74 for taxable years 1999, 2000, 2001, 2002, and 2004.

THE PARTIES

Petitioner GBSI is a corporation duly organized and existing under Philippine laws, with principal office at 61 RBR Laguna Gardens, Bagong Kalsada, Calamba, Laguna.[2] It is engaged in the landscaping business, and provision of plants, by-products and other services.[3]

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[1] Docket, CTA Case No. 9342 Vol. I, pp. 12-49.
[2] *Id.*, Vol. I, Par. 11, Petition for Review, p. 15.
[3] *Id.*, Vol. II, Par. 1.1, Joint Stipulation of Facts and Issues (JSFI), p. 839.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

On April 11, 2012, petitioner received the Letter of Authority (LOA) No. 211-2012-00000026[4] dated March 23, 2012, authorizing the concerned revenue officers to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period covering January 1, 1999 to December 31, 2010 pursuant to the Run After Tax Evaders (RATE) Program.

On October 21, 2014, petitioner received the Preliminary Assessment Notice (PAN) with Details of Discrepancies dated May 12, 2014.[5] Instead of responding formally to the said PAN, petitioner submitted a Barangay Certification dated May 22, 2012 which stated that it was among those businesses affected by typhoon Ondoy which office was severely flooded.[6]

Thereafter, respondent issued the Formal Letter of Demand with Details of Discrepancies and Assessment Notices[7] (FLD/FAN) on December 5, 2014, which was served to petitioner on January 22, 2015.[8] On February 5, 2015, petitioner filed its Protest Letter[9] dated January 5, 2015.

On April 5, 2016[10], petitioner received the FDDA[11] dated April 4, 2016 issued by former BIR Commissioner Kim S. Jacinto-Henares, finding it liable for deficiency income tax and

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[4] Docket, Vol. III, Exhibit "P-5", p. 1247; Exhibit "R-3", BIR Records, Folder 3, p. 607.
[5] *Id.*, Vol. III, Exhibit "P-6", pp. 1248-1254; Exhibit "R-10", BIR Records, Folder 3, pp. 871-893; Docket, Vol. I, Par. 22, Petition for Review, p. 17.
[6] *Id.*, Vol. III, Par. 10 and 11, Petitioner's Memorandum, p. 1420; BIR Records, p. 723.
[7] *Id.*, Vol. III, Exhibit "P-7", pp. 1255-1261; BIR Records, Folder 4, Exhibits "R-11" and "R-11-1", pp. 1021-1037.
[8] *Id.*, Vol. III, as culled from Exhibit "P-4", p. 1242; Docket, Vol. I, Par. 23, Petition for Review, p. 17.
[9] *Id.*, Vol. III, Exhibit "P-8", p. 1262.
[10] *Id.*, Vol. I, Par. 6, Petition for Review, p. 14.
[11] *Id.*, Vol. III, Exhibit "P-4", pp. 1240-1246; BIR Records, Folder 4, Exhibit "R-13", pp. 1160-1173.

VAT, inclusive of interest and penalties, in the aggregate amount of ₱59,513,350.74 for taxable years 1999, 2000, 2001, 2002, and 2004. Hence, petitioner filed the present Petition for Review on May 4, 2016.

Respondent filed his Answer[12] through registered mail on July 26, 2016 and received by the Court on August 4, 2016, interposing the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

3. The foregoing allegations are repleaded and incorporated herein by reference insofar as these are material and applicable.

A. The Petition for Review must be dismissed as the assessment has attained finality by operation of law.

Respondent respectfully submits that the Honorable Court has no jurisdiction over the present case. It is an elementary rule that when an assessment has attained finality, it is no longer open to dispute and discussion. The same result is true as in this case where Petitioner lodge a *pro forma* protest to the FLD/FAN.

In paragraph 24 of its Petition, petitioner stated that it filed a Protest Letter dated January 5, 2015 (attached as Annex 'E') addressed to then Deputy Commissioner of the Operations Group, DCIR Nelson M. Aspe. The said protest letter merely inquired as to the basis of the assessment and requested to re-open the investigation of the case. Clearly, the protest letter did not state the facts, indicate the applicable law, rules and regulations, or jurisprudence on which his protest was based.

Under Section 228 of the National Internal Revenue Code, as amended, a taxpayer may administratively protest an assessment within thirty (30) days from receipt thereof in such form and manner as may be prescribed by implementing rules and regulations. The pertinent portions as hereby reproduced as follows:

xxx xxx xxx

To implement the provisions of Section 228 of the NIRC, Revenue Regulations 12-99 entitled 'Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the

[12] Docket, Vol. II, pp. 433-443.

Code Through Payment of a Suggested Compromise Penalty' was enacted. Section 3.1.5. of the Revenue Regulations reads:

xxx xxx xxx

Indubitably, it is clear from the foregoing that a protest must contain the legal and factual bases for it to be valid. The use of the word 'shall' in these legal provisions indicates the mandatory nature of the requirements laid down therein. Therefore, it cannot be overemphasized that the assessment has become final, executory and demandable by Petitioner's failure to file a valid protest to the FLD/FAN.

Thus, Petitioner is deemed not to have filed any protest at all. Verily, petitioner may no longer dispute the correctness of the assessment as it was aptly afforded due process and an opportunity to contest the findings of respondent's revenue officers. Respondent quotes the case of *Central Metro Trade Distributors, Inc. vs. Hon. Commissioner Guillermo T. Parayno, Jr., Hon. Estrella Martinez.* The said case emphasized the consequence of a taxpayer's failure to protest a tax assessment, *viz:*

xxx xxx xxx

Clearly, petitioner failed to observe the procedure provided for under Section 228 of the Tax Code in disputing an assessment. In the case of *Protector's Services vs. Court of Appeals, et al.,* the Supreme Court observed the effect of failure to file an administrative protest within the reglementary period. Thus:

xxx xxx xxx

Again, the assessment contained in the FLD/FAN is deemed undisputed for failure to file a valid protest on the items of assessment found thereon. Thus, petitioner, is required to pay the deficiency tax attributable to the assessment *in toto* pursuant to Section 3.1.5. of RR No. 12-99 which states:

xxx xxx xxx

As such, because the protest letter did not address any of the items in the assessment, they became necessarily undisputed issues which can no longer be appealed to the Honorable Court. The Court of Tax Appeals can no longer amend, modify, much less set aside such final assessment.

Failure to file a valid protest within the said period means that the assessment *ipso jure* becomes final and unappealable, as a consequence of which legal proceedings may then be initiated for collection thereof as provided for under 3.1.5 of RR 12-99, as amended by RR No. 18-2013. Since respondent's protest letter was void without force and effect for lack of legal basis, it is as if no protest was made against the assessment.

The issuance of an FDDA in this case is of no consequence and does not detract from the fact that the assessment had long become final, unappealable and demandable. In fact, a cursory reading of the FDDA affirms the foregoing discussion that the assessment has indeed become final by operation of law.

B. The assessment was made in accordance with pertinent tax laws and regulations.

Petitioner argues that the Letter of Authority was invalidly issued because there allegedly was no assessment or investigation conducted by the BIR.

Respondent begs to differ and manifests that a preliminary investigation was conducted prior the issuance of a Letter of Authority. Attached herewith is the Memorandum requesting for the issuance of an LOA to dispel all misguided notions that the LOA was invalidly issued. Said memorandum would likewise address petitioner's erroneous reliance or interpretation of Section II (B) (1), wherein it argued that respondent did not have documents for assessment purposes. In fact, all verifications and determinations of the schemes employed and extent of fraud perpetrated by petitioner are contained in the BIR Records of this case. The finding of fraud is essentially contained in the request for the issuance of an LOA.

Still, petitioner insists that the assessment is void for respondent's alleged failure to observe due process.

This preposterous allegation is not supported by any evidence except petitioner's claim that it did not receive the first and second notice to submit relevant documents to the BIR. It must be stressed however that due process, is simply the right to be heard, and this right was repeatedly afforded to petitioner through the assessment process. It must be remembered that from the issuance of the LOA, respondent had been waiting for petitioner to present its case. After every assessment notice, petitioner was given ample opportunity to state its position on the assessment. However, petitioner miserably failed to do so by filing a *pro forma* protest.

Based on the foregoing discussions, petitioner respectfully submits that the subject assessment was issued in accordance with law, having the presumption of correctness and regularity. All presumptions are in favor of the correctness of tax assessments (Sy Po vs. Court of Tax Appeals, 164 SCRA 524). The good faith of tax assessors and validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called (CIR vs. Construction Resources of Asia, Inc. 145 SCRA 671). It is incumbent upon the taxpayer to prove the contrary (Mindanao Bus Company vs. CIR, SCRA 538; CIR vs. Tuazon, Inc., 173 SCRA 397) and failure to do so shall vest legality to respondent's actions and assessments. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notice.

At this juncture, it must be stressed that when assessments are assailed, the burden of proof is upon the complaining party. It is incumbent upon the complaining party to show that the assessment was erroneous, in order to relieve himself from it. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment *(Delta Motors Co. vs. Commissioner, CTA Case No. 3782, 21 May 1986; Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. Nos. 104151 and 105563, 10 March 1995).*

C. Petitioner is not entitled to tax amnesty.

Petitioner argued that it is not liable for the assessed tax because it allegedly availed of tax amnesty program under R.A. No. 9480.

Respondent respectfully disagrees and submits that petitioner has not complied with all documentary requirements set forth under Section 6, 7 and 8 of Department Order 29-07. Stated therein:

xxx xxx xxx

It must be remembered the documents presented by petitioner were inadequate. Assuming the documents are authentic, Petitioner was only able to attach the Notice of Availment of Tax Amnesty Form, Tax Amnesty Return Form, Statement of Assets and Liabilities, Tax Amnesty Payment Form and Receipt. These documents, based on the foregoing enumeration, are insufficient to establish entitlement to the Tax Amnesty Program.

Besides, the SALN should contain the true and complete declaration of assets, liabilities and net worth of the taxpayer. As it stands, after investigation by the BIR, petitioner has not been declaring truthfully its financial documents. Petitioner's understatement is a valid basis for disallowing the benefits and immunities pursuant to the last paragraph of Section 6 of R.A. 9480."

Petitioner filed its Reply[13] through registered mail on August 23, 2016 and received by the Court on September 1, 2016.

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[13] Docket, Vol. II, pp. 471-497.

The Pre-Trial Conference was scheduled on October 13, 2016.[14] Accordingly, respondent's Pre-Trial Brief[15] was filed on September 13, 2016; while petitioner's Pre-Trial Brief[16] was filed on October 7, 2016.

The parties filed their Joint Stipulation of Facts and Issues[17] on November 18, 2016, which was approved by the Court in the Pre-Trial Order[18] dated November 21, 2016.

Petitioner presented Aizza Francesca Briñas[19], Priscilla B. Canicosa[20], and Shirley B. Sanders[21] as its witnesses.

Petitioner filed its Formal Offer of Evidence[22] through registered mail on February 6, 2017 and received by the Court on February 15, 2017, offering Exhibits "P-1", "P-1-A", "P-1-B", "P-2", "P-2-A", "P-2-B", "P-3", "P-3-A", "P-3-B", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-14-A", "P-14-B", "P-15", "P-15-A", and "P-15-B" as its documentary evidence. Respondent filed his Comment (Re: Petitioner's Formal Offer of Evidence)[23] on February 16, 2017.

In the Resolution[24] dated April 18, 2017, the Court admitted Exhibits "P-1", "P-1-A", "P-1-B", "P-2", "P-2-A", "P-2-B", "P-3", "P-3-A", "P-3-B", "P-4", "P-5", "P-6", "P-7", "P-8", "P-14", "P-14-A", "P-14-B", P-15", "P-15-A", and "P-15-B"; but denied the admission of Exhibits "P-9", "P-10", "P-11", "P-12", and "P-13". Upon oral motion for reconsideration of petitioner, Exhibits "P-9", "P-10", "P-11", "P-12", and "P-13" were admitted during the hearing on April 19, 2017.[25]

Respondent presented Revenue Officer Angela Marie T. Simpit-De Leon[26] as witness.

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[14] Docket, Vol. II, Order dated September 16, 2016, p. 784.
[15] *Id.*, Vol. II, pp. 545-549.
[16] *Id.*, Vol. II, pp. 808-813.
[17] *Id.*, Vol. II, pp. 839-843.
[18] *Id.*, Vol. III, pp. 884-888.
[19] *Id.*, Vol. III, Minutes of the hearing dated November 23, 2016, p. 938.
[20] *Id.*, Vol. III, Minutes of the hearing dated December 14, 2016, p. 943.
[21] *Id.*, Vol. III, Minutes of the hearing dated January 30, 2017, p. 1067.
[22] *Id.*, Vol. III, pp. 1075-1081.
[23] *Id.*, Vol. III, pp. 1286-1288.
[24] *Id.*, Vol. IV, pp. 1291-1292.
[25] *Id.*, Vol. IV, p. 1293.
[26] *Id.*, Vol. IV, Minutes of the hearing dated May 17, 2017 and June 21, 2017, pp. 1318 and 1327.

On July 3, 2017, respondent filed his Formal Offer of Evidence[27], offering Exhibits "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-9-1", "R-10", "R-11", "R-11-1", "R-12", "R-13", and "R-14" as his documentary evidence. Petitioner filed a Comment (Re: Respondent's Formal Offer of Evidence)[28] on July 21, 2017.

In the Resolution[29] dated November 17, 2017, the Court admitted all the exhibits formally offered by respondent.

The Court declared the case submitted for decision on January 24, 2018,[30] considering petitioner's Memorandum[31] filed through registered mail on January 8, 2018 and received by the Court on January 12, 2018 and respondent's Memorandum[32] filed on January 19, 2018.

ISSUE

The parties submitted the following issues for the Court's resolution:[33]

1. Whether the Honorable Court has jurisdiction considering the assessment has allegedly attained finality, by operation of law.

2. Whether or not the period to assess and collect taxes has already prescribed.

3. Whether or not the petitioner availed of the tax amnesty under the Tax Amnesty Act of 2007.

4. Whether petitioner may raise its alleged qualifications for tax amnesty for the first time on appeal.

5. Whether or not the petitioner was accorded due process.

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[27] Docket, Vol. IV, pp. 1332-1338.
[28] *Id.*, Vol. IV, pp. 1344-1358.
[29] *Id.*, Vol. IV, pp. 1371-1372.
[30] *Id.*, Vol. IV, Resolution dated January 24, 2018, p. 1469.
[31] *Id.*, Vol. IV, pp. 1418-1452.
[32] *Id.*, Vol. IV, pp. 1458-1468.
[33] *Id.*, Vol. II, JSFI, pp. 839-840.

6. Whether or not the subject assessments have factual and legal bases.

7. Whether petitioner is liable to pay the assessed amount of ₱59,513,350.74 as deficiency taxes for taxable years 1999, 2000, 2001, 2002 and 2004, as well as 25% and 50% surcharge, 20% deficiency and delinquency interest pursuant to Sections 248 and 249 of the NIRC of 1997.

The above-enumerated issues can be summarized as follows:

> Whether or not petitioner is liable to pay the assessed amount of ₱59,513,350.74 allegedly representing deficiency income tax and VAT, inclusive of surcharge and interest, for taxable years 1999, 2000, 2001, 2002, and 2004, considering its availment of tax amnesty under Republic Act (RA) No. 9480.

Petitioner's Arguments[34]

Petitioner argues that it correctly filed its return, hence, the ten (10) year period under Section 222 of the 1997 NIRC, as amended, should not be applied. It also argues that respondent's assessment was invalid because the RATE program of the government was subject to a prescriptive period and the LOA was in violation of Revenue Memorandum Order (RMO) No. 27-2010, and the same lacks factual and legal bases, hence, violating petitioner's right to due process.

Petitioner further argues that respondent erred in issuing such assessment considering that taxable years 1999, 2000, 2001, 2002, and 2004 should be immune from such assessment due to the fact of its availment of the Tax Amnesty Program under Republic Act (RA) No. 9480.

Petitioner also argues that even if the Contracts of Agreement/Billing Statements did exist, they do not lead to the

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[34] *Supra.*, Note 31.

conclusion that the taxpayer intentionally underdeclared its income in the returns.

Respondent's Counter-Arguments[35]

Respondent, on the other hand, argues that this Court has no jurisdiction in the instant case considering that the subject assessment had attained finality by operation of law.

Respondent also argues that the assessment was made in accordance with pertinent tax laws and regulations, and petitioner is not entitled to tax amnesty under RA No. 9480.

RULING OF THE COURT

The Court shall first determine the timeliness of the filing of the case in accordance with Section 228 of the NIRC of 1997, as amended, which provides:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission

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[35] *Supra.*, Note 32.

> of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Pursuant to Section 228 of the NIRC of 1997, petitioner has thirty (30) days from receipt of the FLD/FAN within which to file its administrative protest and another thirty (30) days from receipt of the respondent's decision, or from the lapse of one hundred eighty (180)-day period from submission of documents within which to file its Petition for Review with the Court of Tax Appeals.

In this case, the FLD/FAN with Details of Discrepancies issued on December 5, 2014 was served to petitioner on January 22, 2015. Hence, petitioner had 30 days from its receipt of FLD/FAN on January 22, 2015 or until February 23, 2015[36] within which to file its administrative protest. Thus, the Protest Letter dated January 5, 2015 filed by petitioner on February 5, 2015 was within the prescriptive period.

On April 5, 2016, petitioner received the FDDA issued on April 4, 2016. Counting 30 days from April 5, 2016, petitioner had until May 5, 2016 within which to file its petition before the Court. The present Petition for Review was filed on May 4, 2016. Hence, the Petition for Review was timely filed within the thirty-day prescriptive period.

The Court shall now determine whether petitioner is liable for deficiency income tax and VAT, inclusive of surcharge and interest, in spite of its alleged availment of tax amnesty under RA No. 9480.

A tax amnesty is a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law. It partakes of an absolute forgiveness or waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored nor presumed in law. The grant of a tax amnesty, similar to a tax

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[36] February 21, 2015 fell on a Saturday.

exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.[37]

In 2007, RA No. 9480[38] otherwise known as the "Tax Amnesty Act of 2007" took effect, granting tax amnesty to qualified taxpayers for all national internal revenue taxes for taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005.

The significant provisions pertaining to the availment and grant of tax amnesty under RA No. 9480 are as follows:

> "SECTION 1. *Coverage.* – There is hereby authorized and granted a tax amnesty which shall cover all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005: Provided, however, That the amnesty hereby authorized and granted shall not cover persons or cases enumerated under Section 8 hereof.
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> SECTION 2. *Availment of the Amnesty.* – Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act shall file with the Bureau of Internal Revenue (BIR) a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005, in such form as may be prescribed in the implementing rules and regulations (IRR) of this Act, and pay the applicable amnesty tax within six months from the effectivity of the IRR.
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> SECTION 4. *Presumption of Correctness of the SALN.* – The SALN as of December 31, 2005 shall be considered as true and correct except where the amount of declared networth is understated to the extent of thirty percent (30%) or more as may be established in proceedings initiated by, or at the instance of, parties other than the BIR or its agents: *Provided,* That such proceedings must be initiated within one year following the date of the filing of the tax amnesty return and the SALN. Findings of or admission in congressional hearings, other administrative agencies of government, and/or courts shall be admissible to prove a thirty percent (30%) under-declaration.

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[37] *Commissioner of Internal Revenue vs. Philippine-Aluminum Wheels, Inc.*, G.R. No. 216161, August 9, 2017.

[38] An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years.

SECTION 5. *Grant of Tax Amnesty.* – Except for the persons or cases covered in Section 8 hereof, any person, whether natural or juridical, may avail himself of the benefits of tax amnesty under this Act, and pay the amnesty tax due thereon, based on his networth as of December 31, 2005 as declared in the SALN as of said period xxx

xxx xxx xxx

SECTION 6. *Immunities and Privileges.* – Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:

(a) The taxpayer shall be immune from the payment of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

(b) The taxpayer's Tax Amnesty Returns and the SALN as of December 31, 2005 shall not be admissible as evidence in all proceedings that pertain to taxable year 2005 and prior years, insofar as such proceedings relate to internal revenue taxes, before judicial, quasi-judicial or administrative bodies in which he is a defendant or respondent, and except for the purpose of ascertaining the networth beginning January 1, 2006, the same shall not be examined, inquired or looked into by any person or government office. However, the taxpayer may use this as a defense, whenever appropriate, in cases brought against him.

(c) The books of accounts and other records of the taxpayer for the years covered by the tax amnesty availed of shall not be examined: *Provided,* That the Commissioner of Internal Revenue may authorize in writing the examination of the said books of accounts and other records to verify the validity or correctness of a claim for any tax refund, tax credit (other than refund or credit of taxes withheld on wages), tax incentives, and/or exemptions under existing laws.

All these immunities and privileges shall not apply where the person failed to file a SALN and the Tax Amnesty Return, or where the amount of networth as of December 31, 2005 is proven to be understated to the extent of thirty percent

(30%) or more, in accordance with the provisions of Section 3 hereof.

SECTION 7. *When and Where to File and Pay.* – The filing of the Tax Amnesty Return and the payment of the amnesty tax for those availing themselves of the tax amnesty shall be made within six months starting from the effectivity of the IRR. It shall be filed at the office of the Revenue District Officer which has jurisdiction over the legal residence or principal place of business of the filer. The Revenue District Officer shall issue an acceptance of payment form authorizing an authorized agent bank, or in the absence thereof, the collection agent or municipal treasurer concerned, to accept the amnesty tax payment

SECTION 8. *Exceptions.* – The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:

(a) Withholding agents with respect to their withholding tax liabilities;

(b) Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;

(c) Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;

(d) Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;

(e) Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and

(f) Tax cases subject of final and executory judgment by the courts."

On August 15, 2007, the Department of Finance (DOF) issued Department Order No. 29-07 (DO No. 29-07) to implement the provisions of the Tax Amnesty Act of 2007 under RA No. 9480.

The relevant provisions of DOF DO No. 29-07 provide:

"SECTION 6. *Method of Availment of Tax Amnesty.* –

1. *Forms/Documents to be filed.* – To avail of the general tax amnesty, concerned taxpayers shall file the following documents/requirements:

    a. Notice of Availment in such form as may be prescribed by the BIR.

    b. Statements of Assets, Liabilities and Networth (SALN) as of December 31, 2005 in such form, as may be prescribed by the BIR;

    c. Tax Amnesty Return in such form as may be prescribed by the BIR.

2. *Place of Filing of Amnesty Tax Return.* – The Tax Amnesty Return, together with the other documents stated in Sec. 6 (1) hereof, shall be filed as follows:

    a. Residents shall file with the Revenue District Officer (RDO)/Large Taxpayer District Office of the BIR which has jurisdiction over the legal residence or principal place of business of the taxpayer, as the case may be.

    b. Non-residents shall file with the office of the Commissioner of the BIR, or with the RDO.

    c. At the option of the taxpayer, the RDO may assist the taxpayer in accomplishing the forms and computing the taxable base and the amnesty tax payable, but may not look into, question or examine the veracity of the entries contained in the Tax Amnesty Return, Statement of Assets, Liabilities and Networth, or such other documents submitted by the taxpayer.

3. *Payment of Amnesty Tax and Full Compliance.* – Upon filing of the Tax Amnesty Return in accordance with Sec. 6 (2), the taxpayer shall pay the amnesty tax to the authorized agent bank or in the absence thereof, the Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business.

> The RDO shall issue sufficient Acceptance of Payment Forms, as may be prescribed by the BIR for the use of - or to be accomplished by – the bank, the collection agent or the Treasurer, showing the acceptance by the amnesty tax payment. In case of the authorized agent bank, the branch manager or the assistant branch manager shall sign the acceptance of payment form.
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> **The Acceptance of Payment Form, the Notice of Availment, the SALN, and the Tax Amnesty Return shall be submitted to the RDO, which shall be received only after complete payment. The completion of these requirements shall be deemed full compliance with the provisions of RA 9480**.
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> SECTION 9. *Presumption of Correctness of SALN.* – The corresponding SALN as of December 31, 2005 filed by the taxpayer desiring to avail of the tax amnesty shall be presumed true and correct, except in the following cases:
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> 1. Where the amount of the declared networth is understated to the extent of thirty (30%) or more as may be established in proceedings initiated within one (1)-year following the date of filing of the Tax Amnesty Return and the SALN, by, or the instance of parties other than the BIR or its agents, as when any person, entity or government agency informs the BIR, with sufficient evidence, that the amount of the declared networth is understated to the extent of thirty percent (30%) or more.
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> 2. When findings of or admission in congressional hearings or proceedings in administrative agencies of the government, and in courts, prove that there is at least thirty percent (30%) under-declaration." *(Emphasis supplied)*

In availing themselves of the benefits of the tax amnesty program, taxpayers must first accomplish the following forms and prepare them for submission: (1) Notice of Availment of Tax Amnesty Form; (2) Tax Amnesty Return Form (BIR Form No. 2116); (3) Statement of Assets, Liabilities and Net worth (SALN) as of December 31, 2005; and (4) Tax Amnesty Payment Form (Acceptance of Payment Form or BIR Form No. 0617). The taxpayers must then compute the amnesty tax due in accordance with the rates provided in Section 5 of the law, using as tax base their net worth as of December 31, 2005 as declared in their SALNs. At their option, the Revenue District Office (RDO) of the BIR may assist them in accomplishing the forms and computing the taxable base and the amnesty tax due. The RDO, however, is disallowed from looking into, questioning or examining the veracity of the entries contained in the Tax Amnesty Return, SALN, and other documents they have submitted. Using the Tax Amnesty Payment Form, the taxpayers must make a complete payment of the computed amount to an authorized agent bank, a collection agent, or a duly authorized treasurer of the city or municipality. Thereafter, the taxpayers must file with the RDO or an authorized agent bank the (1) Notice of Availment of Tax Amnesty Form; (2) Tax Amnesty Return Form (BIR Form No. 2116); (3) SALN; and (4) Tax Amnesty Payment Form. The RDO shall only receive these documents after complete payment is made, as shown in the Tax Amnesty Payment Form.[39]

The submission of the documentary requirements and payment of the amnesty tax is considered full compliance with RA No. 9480 and the taxpayer can immediately enjoy the immunities and privileges enumerated in Section 6 of the law. The plain and straightforward conditions were obviously meant to encourage taxpayers to avail of the amnesty program, thereby enhancing revenue administration and collection.[40]

In order to substantiate its availment of the Tax Amnesty Program under RA No. 9480, petitioner presented and formally offered to this Court the following documents: (1) Notice of Availment of Tax Amnesty dated May 5, 2008[41]; (2) Tax Amnesty Return (BIR Form No. 2116)[42]; (3) Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005[43]; (4) Tax Amnesty Payment Form (Acceptance of Payment Form or BIR Form No. 0617)[44]; and (5) Transmittal Letter dated October 12, 2009.[45] The Court admitted these exhibits during the

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[39] *CS Garment, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 182399, March 12, 2014.
[40] *Commissioner of Internal Revenue vs. Apo Cement Corporation,* G.R. No. 193381, February 8, 2017.
[41] Docket, Vol. III, Exhibit "P-9", p. 1263.
[42] *Id.*, Vol. III, Exhibit "P-10", p. 1264.
[43] *Id.*, Vol. III, Exhibit "P-11", p. 1265.
[44] *Id.*, Vol. III, Exhibit "P-12", p. 1266.
[45] *Id.*, Vol. III, Exhibit "P-13", p. 1267.

hearing on April 19, 2017. The submission of these documents was also admitted by respondent.[46]

An examination of the documents presented shows that petitioner satisfactorily complied with the provisions of the Tax Amnesty Law of 2007. Considering that the completion of these requirements shall be deemed full compliance with the Tax Amnesty Program, petitioner should be immune from the payment of taxes, as well as the appurtenant civil, criminal or administrative penalties under the NIRC of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.[47]

Moreover, Section 4 of RA No. 9480 provides that the SALN as of December 31, 2005 shall be considered as true and correct except where the amount of declared net worth is understated to the extent of thirty percent (30%) or more as may be established in proceedings initiated by, or **at the instance of, parties other than the BIR or its agents**. Such proceedings must be initiated within one year following the date of the filing of the Tax Amnesty Return and the SALN. Findings of or admission in congressional hearings, other administrative agencies of government, and/or courts shall be admissible to prove a 30% under-declaration.

In other words, the SALN is presumed correct unless there is a concurrence of the following: (a) there is under-declaration of net worth by 30%; (b) the under-declaration is established in proceedings initiated by parties other than the BIR; and (c) the proceedings were initiated within one year from the filing of the tax amnesty.[48]

This Court cannot disregard the plain and categorical text of Section 4 of RA No. 9480. A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo,*

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[46] *Id.*, Vol. IV, Memorandum, p. 1466.
[47] *Philippine Banking Corporation (Now: Global Business Bank, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 170574, January 30, 2009.
[48] *Commissioner of Internal Revenue vs. Apo Cement Corporation*, G.R. No. 193381, February 8, 2017.

or "speech is the index of intention." Furthermore, there is the maxim *verba legis non est recedendum*, or "from the words of a statute there should be no departure."[49]

It must be noted that respondent failed to prove his allegation that the documents submitted by petitioner are inadequate and that there was under-declaration of net worth of petitioner by 30% established in proceedings initiated by parties other than the BIR and initiated within one year from the filing of the tax amnesty documents on October 13, 2009.[50]

It is axiomatic that under the Rules on Evidence a party who alleges a fact has the burden of proving it. A mere allegation is not evidence, and he who alleges has the burden of proving his allegation with the requisite quantum of evidence.[51]

In this case, the one-year period provided under Section 4 of RA No. 9480 had already lapsed without anyone challenging the correctness of petitioner's SALN. Thus, the same continues to bear the presumption of correctness as provided for under RA No. 9480. Considering all the foregoing, petitioner may now enjoy the immunities provided for by the said law.

Based on the foregoing discussion, the Court sees no cogent reason to discuss the other issues raised by the parties.

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment and the assessment for deficiency income tax and value-added tax, inclusive of surcharge and interest, in the aggregate amount of ₱59,513,350.74 for taxable years 1999, 2000, 2001, 2002, and 2004 are **CANCELLED**, in view of petitioner's availment of the Tax Amnesty Program under Republic Act No. 9480.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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[49] *Bolos vs. Bolos*, G.R. No. 186400, October 20, 2010.
[50] Docket, Vol. III, Exhibit "P-13", p. 1267.
[51] *Spouses Ramos vs. Obispo, et al.*, G.R. No. 193804, February 27, 2013.

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice